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By EFS

In Re Application of: Keith James Hensel
US Application Number: 10/562,025
Filing Date: 22 December 2005
Title: Juicer
Group Art Unit:
Examiner:
Attorney Docket No: BRE0308U

5 November 2008

Reply to Examiner's 22 October 2008 Detailed Action

Dear Sirs,

The Applicant gratefully acknowledges receipt of the most recent Detailed Action, mailed October 22 2008.

In that Action the examiner contends that claims 21, 23, 28, 30-33, 35, 36, 38 and 39 are unpatentable under Section 35USC103(a). The Applicant respectfully disagrees. The Applicant will argue, below, that the invention would not have been obvious in view of any combination of the five diverse references produced by the examiner. The Applicant will also demonstrate that the examiner has made both significant factual and legal errors in reaching the conclusion on unpatenability.

Introduction

The essential notion of the invention is conveyed on page 4, lines 22-25. “Importantly the combination of clear cap 52 and steel feed tube provides all of the advantages of both, that is, adequate strength in the feed tube and knife and the ability to see under the cap”.

The history of the juicing art is replete with examples of metal caps with metal feed tubes and plastic caps with plastic feed tubes. The metal cap with metal feed tube is well known. It provides strength and durability, particularly in the area of the feed tube where the food plunger is capable of generating significant stresses. The advantages of the plastic cap and integral plastic feed tube arrangement are also well known and well exemplified by the examiner’s citation of Harrison (US 5,495,795; “the 795”).

In essence, the examiner’s contention is that because the plastic cap with feed tube was known and the metal cap with metal feed tube was known, that it would have been obvious to combine the two, to provide a plastic cap with a metal feed tube. The Applicant strongly disagrees with both the examiner’s approach, analysis and conclusion.

The Examiner Has Misconstrued the Scope and Content of the Prior Art

The examiner is obliged to consider the scope and content of the prior art. As outlined by the Supreme Court in *Graham et al. v. John Deere Co.* 383US1 (1966). (“Graham”). Within the context of the problems solved by the present invention, it is incumbent on the examiner to demonstrate, from within the prior art, the replacement or substitution of potentially vulnerable plastic portions (of an integral moulding) with a stronger metal component, particularly in resisting stress, and more particularly in the art of kitchen appliances where metal is replacing a portion of a plastic part for structural purposes. Instead, the examiner has only produced all metal caps with metal feed tubes and an all plastic cap with integral plastic feed tube. These are precisely the problems that were overcome by the present invention and do not demonstrate or evidence anything whatsoever about the obviousness of combining diverse plastic and metal parts. Within the context of this discussion, Harrison is representative of an all plastic cap with plastic feed tube and Doering and Knapp are representative of all metal assemblies.

The examiner's art which is deemed by the examiner as suggestive of how metal and plastic are used together in these types of appliances is deeply misplaced. Neither Prudhomme nor Nejat-Bina are juicers, neither uses a feed tube, neither references utilises a pusher to generate stresses, neither reference is relevant to the way problems are solved in this field and neither reference demonstrates how plastic and metal can be joined for any advantageous purpose whatsoever. The Nejat-Bina is an electric recycle style food mixer. All of the stresses generated by the tapered mixing blade 12 are essentially contained within the metallic perforated cylinder 56. The outer wall 82 is merely a casing and has no mechanical interconnection with the metal tube 56. In fact, the stresses carried by the outer wall or tube 82 are so low that the specification suggests that it can be manufactured from glass. The purpose of the outer container or tube 82 is merely to contain the ingredients in the ingredients that are forced through the perforations in the inner metal cylinder. The analogy between Nejat-Bina and any aspect of the teachings of the present invention must be considered exceedingly far fetched.

Similarly, Prudhomme is a form of centrifugal porous basket for reducing the fat content of fried food. It has no effective containment cap in the sense that a juicer has, and no feed tube of any kind, either plastic or metal. Thus, there would be no reason for a person of skilled art to consult art of the kind represented by Prudhomme or Nejat-Bina and therefore the examiner's consideration of these references within the relevant scope and content of the prior art must be considered deeply flawed.

In fact, none of the examiner's references even disclose, in any sense a metal feed tube having an interior to which is attached a metal knife. The examiner contends that the metal knife is for the purpose of cutting the fruit or reducing the size of it. In fact, the metal knife is provided to prevent the fruit from rotating within the feed tube and plays little or no role in altering the size of the fruit as it descends the feed tube toward the blade. To the extent that this element was considered by the examiner it was misconstrued.

None of the art cited by the examiner addresses the subject matter of claim 23, that is, a feed tube with a circumferential flange. The circumferential flange not only allows the metallic tube to be joined to a plastic cap but also strengthens the tube in the area of the

flange. The examiner's art citations are entirely silent on this feature. Given that none of the cited art contains a tube with circumferential flange, the art is also silent on the important integers in claim 24, being a gasket interposed between the flange and the cap. Similarly, the integers of claims 26-28 are entirely absent and therefore the examiner's position regarding the scope and content of the prior art must be considered clearly erroneous.

With respect to claims 29 and 30 that pertain to tapered gap between the cap's descending rim and an inner surface of the juice stopping rim, the examiner's art citations are deeply misplaced. In terms of analogous subject matter Knapp shows only a parallel gap and not a tapered gap. None of the other references contain any meaningful teachings whatsoever regarding the relationship between the juice stopping rim of the juice collector and the descending rim of the cap. This is the area in which juice is known to leak from the device and the provision of the tapered gap represents a development in the field that minimises waste and mess. The technical advantages of this gap arrangements are well explained in the specification and it is suggested that the examiner carefully consider the specification when comparing the invention to the prior art.

The Examiner has not Properly Considered the Differences Between the Claimed Invention and the Prior Art

One of the most important of the four Graham factors is the accurate identification of the differences between the claimed invention and the prior art. Within the context of the present claims, the differences are startling. None of the prior art citations, individually, disclose anything like any of the pending claims and this is tacitly acknowledged by the lack of a novelty rejection. Going further, none of the references suggest, teach or motivate the joining of a metal feed tube to a plastic cap in any way. None of the references disclose a circumferential flange around a metal feed tube or the use of the gasket arrangement claimed by the Applicant. Further, none of the references disclose a tapered gap between a juice stopping rim and a descending rim that exist between a polymeric cap and juice stopping rim.

The Examiner has Made no Finding Regarding Ordinary Skill

Graham requires the examiner to consider the level of ordinary skill in the art. Although the Applicant is willing to concede that this is rarely conducted in earnest during prosecution, the examiner would be well advised to consider not only the level of ordinary skill but the related “common sense” factors eluded to the US Supreme Court in the more recent case of KSR v. Teleflex 82 USPQ2d 1385 (2007). With reference to Justice Kennedy’s opinion, the examiner is reminded that a person of ordinary skill has common sense. A “common sense” approach, considering only the art revealed by the examiner can not possibly be seen as leading directly to the solution proposed by the patentee, namely, replacing the integral plastic feed tube in a plastic cap with a metal feed tube that is attached to the plastic cap.

It is important to recognise that in the KSR case was limited to its fact to situations where a person of ordinary skill is faced with specific developments in a field and a well defined problem. The present situation is entirely different because it concerns itself with more with the initial motivation for making a particular change rather than the recognition (or not) of a benefit of making a simple substitution that would have been obvious to try (as in KSR).

The examiner has not identified any reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed. Because no reason has been provided, it must be assumed that the examiner has merely supplied hindsight in reconstructing the invention, having had the benefit of the Applicant’s specification.

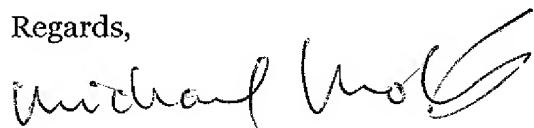
Conclusions

None of the art produced by the examiner evidences the identification of the problem first solved by the Applicant. This fact alone serves to clearly distinguish the present situation from the KSR case referred to above. The Applicant should not be prejudiced because they were first to discover a particular problems. Having identified a weakness in the state of the art, the Applicant has proposed an effective solution that makes the underlying device safer, stronger, more durable and without sacrifice to the aesthetic value of the product of the user’s ability to inspect the interior of the device through the

polymeric cap. The examiner's art citations do little more than identify the prior art problem that was overcome, namely all plastic caps with plastic feed tubes and all metal caps with all metal feed tubes. Nowhere is there any evidence for a suggestion, motivation or teaching that remotely points in the direction of the Applicant's claims. Accordingly, the examiner is requested to carefully reconsider the claims language and the art citations. Favourable reconsideration is requested.

Please charge any deficiency in the fees due to our Deposit Account No. 503458 in the name of Molins & Co.

Regards,

A handwritten signature in black ink, appearing to read "Michael Molins", with a stylized flourish at the end.

Michael Molins
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Encl.

MM/rm